

REMARKS

The Examiner has rejected Claim 1-63 under 35 U.S.C. 102(e) as being anticipated by Hodges et al, U.S. Patent No.: 6,035,423. Applicant respectfully disagrees with such rejection.

Specifically, the Examiner relies on the following excerpts from Hodges to make a prior art showing of applicant's claimed "determining a demand level upon said source computer for downloading of said computer file to said plurality of target computers" (or similar, but not identical, language).

"These and other objects are achieved by a method and system for updating local client computers with antivirus software updates from a central antivirus server, the local client computers and the central antivirus server being coupled by a packet-switched network, wherein the antivirus software updates are transferred from the central antivirus server to a given local client computer using a push technology method." (col. 4, lines 48-55)

"If the client computer has not been sent the most recent antivirus updates, the central antivirus server transmits updated antivirus files to that client computer over the computer network." (col. 5, lines 1-5)

"The central server uses push technology to automatically transmit antivirus software updates to the local area network antivirus server whenever any of the plurality of local client computers contain antivirus software which is out of date." (col. 5, lines 24-27)

"Among the information transmitted from client computer 302 to central antivirus server 308 are two items of data used for achieving automated download and updating of antivirus files on client computer 302. In particular, (a) the IP address 305 of client computer 302 (e.g., 205.84.4.137), and (b) a unique user ID (e.g., "BJONES01234") are transmitted to central antivirus server 308." (col. 7, lines 33-35)

After careful reviewing such excerpts along with the remaining Hodges reference, there is clearly no disclosure, teaching or suggestion of any sort of "demand level," let alone "determining a demand level upon said source computer for downloading of said computer file to said plurality of target computers." In other words, only applicant teaches and claims the determination of a level of demand associated specifically with the downloading of a computer file to a plurality of target

NAI1P160/00.011.01

2

computers. By virtue of this key deficiency in Hodges, applicant contends that Hodges inherently fails to anticipate the remaining claim limitations.

For example, the Examiner further relies on the following excerpt from Hodges to make a prior art showing of applicant's claimed "controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message," and "adjusting said downloading controlling message in dependence upon said demand level" (or similar, but not identical, language).

"According to a preferred embodiment, service computer 1020 is loaded with a group update agent software package capable of (a) automatically receiving antivirus software updates for a variety of client computers on the corporate network 1006 according to a push technology method, and (b) automatically distributing the antivirus updates to the respective client computers, in a manner which is transparent to both the system administrator 1022 and to the users of the client computers. Advantageously, the most recent antivirus software is distributed to the client computers on corporate network 1006 without the need for affirmative action by the system administrator 1022." (col. 11, lines 58-67)

Again, there is clearly no disclosure, teaching or suggestion of any sort of "demand level," and thus there inherently can not be any teaching of "controlling downloading ... in dependence upon said download controlling message," and "adjusting said downloading controlling message in dependence upon said demand level." As exemplified by the above excerpt, Hodges merely teaches downloading computer files utilizing a push technology. There is clearly no provision of determining a level of demand of such downloading for the specific purpose of controlling such downloading based on a downloading controlling message that is adjusted per the demand level. Only applicant teaches and claims such a combination of features for controlling the downloading of a computer file based on a demand level, in the manner claimed.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d

NAIIP160/00.011.01

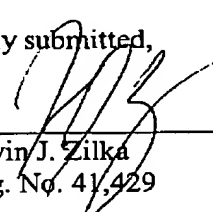
3

628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criteria has simply not been met by the Hodges reference.

Still yet, applicant notes that the Examiner's application of the Hodges reference to applicant's dependent claims is similarly deficient, as Hodges completely lacks the crux of applicant's claimed invention. A specific prior art showing of such details or a notice of allowance is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. A check has been enclosed to pay the excess claims fees. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P160/00.110.01). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,

By: 
Kevin J. Zilka
Reg. No. 41,429

Date: 2/5/04

Silicon Valley IP Group, P.C.
P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573
Facsimile: (408) 971-4660

NAI1P160/00.011.01

4